



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/387,443	09/01/1999	WILLIAM KOPACIEWICZ	550P002CONT.	2583

7590 05/13/2003

KEVIN S LEMACK
NIELDS LEMACK & DINGMAN
176 E MAIN STREET
SUITE 8
WESTBORO, MA 01581

EXAMINER

FORTUNA, ANA M

ART UNIT	PAPER NUMBER
----------	--------------

1723

DATE MAILED: 05/13/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/387,443Applicant(s)
KopaciewiczExaminer
Ana FortunaArt Unit
1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 4, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1723

DETAILED ACTION

Claim Rejections - 35 U.S.C. § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
2. Claims 1, 6-9, 11, 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Nochumson et al (5,552,325)(hereinafter '325). This rejection has been discussed on paper no.13, and is maintained by reasons discussed bellow.

3. Claims 1, 2, 11, 12, 3, 4, 5, 14, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by White(5,156,811). This rejection has been discussed on paper No. 13, and is maintained.

Claim Rejections - 35 U.S.C. § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 10, 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Nochumson et al (5,552,325)(hereinafter '325) as applied to claim 1 above and further in view of

Art Unit: 1723

Hagen et al. (4,810,381) (hereinafter Hagen) or Hilderbrandt et al (4,968,430)(hereinafter '430).

This rejection has been discussed on paper No. 13, which now maintained.

Response to Arguments

6. Applicant's arguments filed on 4/04/2003 have been fully considered but they are not persuasive. In the response, Applicant argues, in reference to Nochumson et al. ('325), that this reference fails to disclose adhering the membrane to the wall of the housing. The term "adhered" means by definition: to hold fast as stick by or as if by gluing, suction, grasping or fusing (Webster's Ninth New Collegiate Dictionary), which term does not exclude, in the present invention, the option of having the filter removable from the housing and hold fast against the wall of the container. The invention on the present application, as discussed on page 10, last paragraph, includes the option of inserting the membrane within the housing after the membrane is made, which indicates that the membrane can be removable from the housing, unless any gluing or fixing material adheres the membrane to the housing, such means for adhering are not present in the disclosure of the invention. Therefore, the device of Nochumson et al and the device of the present invention are considered to have the same structural elements. Since the reference does not teach away and show all the elements of the device claimed, the rejection as in paper No. 13 is maintained. As to arguments with respect to claims 2 and 12, the tubular housing is disclosed as open to both ends, e.g element 22, 23 (which is open, and membrane 21, which is positioned substantially at the lower end, and adhered to the walls of the inner container (22), as shown in sole Fig.).

Art Unit: 1723

Arguments regarding reference to White ('811) under 102, the rejection of claims 2 and 12, based on this reference has been withdrawn, rejection of additional claims are maintained. The rejection based on the combination of rejection under 103 is also maintained, based on the reasons discussed above.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CAR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CAR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana Fortuna whose telephone number is (703) 308-3857. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached on (703) 308-0457. The fax phone number for the organization

Application/Control Number: 09/387,443

Page 5

Art Unit: 1723

where this application or proceeding is assigned is (703) 872-9310 for regular responses, and
(703)872-9311 for after finals.

Ana Fortuna

May 12, 2003



ANA FORTUNA
PRIMARY EXAMINER